

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PITTS AND SONS TRUCKING CO., INC.

and

Case 5--CA--21418

DRIVERS, CHAUFFEURS AND HELPERS
LOCAL 639 AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL--CIO

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Devaney
Upon a charge filed by the Union on August 17, 1990, the General Counsel

of the National Labor Relations Board issued a complaint against Pitts and Sons Trucking Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain with the Union. Although properly served copies of the charge and the complaint, the Respondent has failed to file an answer.

On December 24, 1990, the General Counsel filed a Motion for Summary Judgment. On December 28, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated November 1, 1990, counsel for the General Counsel notified the Respondent that unless an answer was received by close of business on November 9, 1990, a Motion for Summary Judgment would be filed. The Respondent did not file an answer as requested.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Maryland corporation with an office and place of business in Hyattsville, Maryland, is engaged in the business of delivering construction materials and other goods by truck within the State of Maryland, the District of Columbia, and other locations. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business, derived gross revenues in excess of \$50,000 for the transportation of construction materials and other goods directly from the State of Maryland to points and places located outside the State of Maryland. We find that the Respondent is an employer engaged in

commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Following a Board-conducted election in Case 5--RC--13347 held on April 20, 1990, the Union was certified on June 6, 1990,¹ as the collective-bargaining representative of the Employer's employees in the following appropriate unit:

All full-time and regular part-time truck drivers, mechanics, and laborers employed by the Employer at its Hyattsville, Maryland location, but excluding office clericals, dispatchers, guards and supervisors as defined in the Act.

Since June 6, 1990, and at all times material, the Union has been, and is, the exclusive collective-bargaining representative of employees in the above unit by virtue of Section 9(a) of the Act.

On or about June 15, 1990, the Union, by letter, requested the Respondent to bargain with it as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment. Since on or about June 15, 1990, the Respondent has failed and refused to do so.

By its overall acts and conduct, the Respondent has failed and refused, and is failing and refusing, to bargain in good faith with the Union as the lawful representative of the unit employees, in violation of Section 8(a)(5) and (1) of the Act.

¹ The Board issued the certification following the Respondent's failure to file exceptions to the Regional Director's recommendation that its objections be overruled.

Conclusions of Law

By failing and refusing since on or about June 15, 1990, to bargain with the Union as the duly certified collective-bargaining representative of its employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Pitts and Sons Trucking Co., Inc., Hyattsville, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Drivers, Chauffeurs and Helpers Local 639 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers, mechanics, and laborers employed by the Employer at its Hyattsville, Maryland location, but excluding office clericals, dispatchers, guards and supervisors as defined in the Act.

(d) Post at its facility in Hyattsville, Maryland, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 25, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Drivers, Chauffeurs and Helpers Local 639 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers, mechanics, and laborers employed by the Employer at its Hyattsville, Maryland location, but excluding office clericals, dispatchers, guards and supervisors as defined in the Act.

PITTS AND SONS TRUCKING CO., INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 109 Market Place, Fourth Floor, Baltimore, Maryland 21202-4026, Telephone 301--962--2772.